IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1771 OF 2006

Sanjay Baburao Kamble .. Applicant

Versus

State of Maharashtra .. Respondent

Ms.Bhalekar i/b. Uday P. Wajunjikar for applicant

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th August 2006

P.C.

. Heard Ms.Bhalekar for applicant and Mr.Pednekar, A.P.P. for State.

2. The applicant is an accused in C.R.No.406 of 2004 registered with Nigadi police station, Pune for offences punishable under section 302 of I.P.C.

3. F.I.R. is lodged by one Baban Nagu Khavale, stating that on 16th October 2004 at about 9.30 p.m. when he was in his house along with his wife, he heard some shouts in the building. He heard the shouts from the opposite building and some people were abusing. He, therefore, climbed the staircase of that building and in the staircase itself he saw that his brother Prasad @ Pappu was being administered kick and fist blows by applicant. His brother fell down. One Nishant Mane and his wife, so also sister of complainant and others gathered at site. Nishant Mane told the complainant that the applicant and the deceased had a fight over electric light connection and that is how the quarrel took place.

4. It appears that the deceased was taken to hospital and was declared dead on admission. The allegation is that the applicant has administered fist blows and kicks on account of which deceased succumbed.

5. It appears that there is a statement of the applicant recorded on 24th October 2004 and he has pointed out that the applicant had a fight with the deceased because the deceased was trying to remove connecting wire from the main cable to the house of the applicant. The quarrel took place because the applicant thought that on account of acts of deceased, there would be no electricity in his house. So also, the deceased wanted to have a connection insofar as his premises are concerned. Thus, from this statement, it is clear that he is admitting that the quarrel took place. He is prima facie admitting that initially on account of abuse

hurled at him by the deceased, he administered blows and deceased fell. He said that the deceased was unconscious.

6. Applicant came to be arrested on 17th October 2004. Initially he was granted police custody and thereafter, judicial custody. Applicant's application for bail has been rejected by the learned trial Judge by holding that the charge sheet reveals that the applicant assaulted the deceased by hands at the time of incident, but the post mortem report shows that the deceased sustained four inner wounds on his sternure. Hence, there is a possibility that the applicant might have concealed a pointed weapon in his hand and with the help of such pointed weapon, caused the inner wounds. On account of this prima facie opinion, according to learned Judge, applicant had intention to cause death of the deceased. In such circumstances, he held that the applicant is disentitled to bail.

7. Copies of the statement of complainant so also that of the applicant accused are annexed to this application. Medical certificate of the hospital concerned, together with memo of P.M. report are also annexed. Item No.17 entitles Surface wounds and injuries contains observations "punctured abrasions over sternure . 4 in no. 1/4 cm. in diameter 13 cm below sternal krotch towards (L) side superfacial"

8. However, opinion as to probable cause of death has been reserved. The P.M. report is also of 17th October 2004. Learned Advocate appearing for the applicant submits that a bare perusal of the statement would reveal that the position is that applicant is alleged to have administered only hand and fist blows and in any event kicked the deceased. However, at no stage, has a reference been made to any weapon much less pointed weapon allegedly concealed by the

applicant. He submits that the learned Judge has recorded the prima facie conclusion on the basis of the above contents of the P.M. report. However, the entire incident must be seen in the backdrop of the fact that the applicant was trying to prevent an attempt of the deceased to illegally connect electricity to his house from the main connecting wire. He apprehended and confronted the deceased because in his view, the applicant's house premises would be deprived of the electricity. It is a clear case where there was a provocation on account of acts indulged in by the deceased. Applicant is detained since 17th October 2004. There are no antecedents. The applicant has a permanent place of residence. There is no possibility of the applicant tampering with the evidence or threatening any witnesses. The investigations are complete and the charge sheet is filed long time back. In these circumstances, this Court should grant the application.

9. Mr.Pednekar pointed out that the learned Judge has referred to the prima facie conclusions in the P.M. report. The report is inconclusive. In such circumstances and when the applicant resides in the same area in the vicinity of the premises where even the family of complainant and deceased resides, this is not a fit case for enlarging the applicant on bail. The application, therefore, must be dismissed. Offence is serious and grave in nature. The punishment in law is prescribed for the same.

10. After hearing learned Advocates for both sides and perusing the material including annexures to the application, in my view, the backdrop in which the incident occurred cannot be overlooked even at this prima facie stage. Statement of brother of deceased so also the applicant’s own statement would reveal that a sudden fight took place over electricity

connection. It may be that the applicant and the deceased were trying to illegally connect the electric supply to their premises from the main connecting wire. But, there is no other material. There does not appear to be any premeditated assault or any attack on account of enmity. It is a case where the applicant on seeing the deceased removing electric wire confronted him and quarrel took place. It is on account of this sudden and provocative act of the deceased, that the fist blows were administered. There is prima facie no material to indicate use of any weapon. There is no recovery as well. That apart, the principles upon which bail application can be considered are well settled. Applying these settled principles to the facts of the present case and when there are no antecedents and the applicant has been detained for nearly two years, it would be appropriate to enlarge him on bail, albeit, with stringent conditions. Hence, the following order:-

i) The applicant arrested in connection with C.R.No.406 of 2004 registered with Nigadi Police Station Pune, shall be enlarged on bail subject to furnishing a personal bond of Rs.10,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer on every Saturday between 11.00 a.m. and 1.00 p.m. till conclusion of the trial. The applicant shall not reside in the jurisdiction of Nigadi police station. He is allowed to enter jurisdiction of Nigadi police station only for the purpose of reporting on every Saturday between 11.00 a.m. and

1.00 p.m.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate

with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)